

HUMAN RIGHTS

HUMAN RIGHTSCONTENTS

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HUMAN RIGHTS

The purpose of this chapter is to define policies and procedures used at the Mental Health Institutes and the Hospital-Schools to assure that services are provided in a manner that safeguards the rights and welfare of the patients and residents. These facilities have many functions to perform including treatment, training and clinical research. All of these activities must be conducted with an overriding concern for the client, and, above all, the recognition of his/her dignity as a human being.

LEGAL BASE

The policies and procedures in this Chapter are based upon the following:

- A. Chapter 218, Code of Iowa, Government of Institutions
- B. Chapter 222, Code of Iowa, Mentally Retarded Persons
- C. Chapter 225B, Code of Iowa, Unified State Mental Health Agency
- D. Chapter 226, Code of Iowa, State Mental Health Institutes
- E. Chapter 229, Code of Iowa, Hospitalization of Mentally Ill Persons
- F. Iowa Administrative Code, 770--Chapter 28

DEFINITIONS

- A. "Client" as used in this Chapter, is any person receiving inpatient or outpatient treatment services in or from one of the institutions of the Division.
- B. "Client Abuse", as used in this Chapter is defined as any verbal or nonverbal act, committed or omitted, willfully carried out by a division employee or volunteer, which could or does cause physical pain, physical injury, psychological or emotional trauma to a client or which is degrading or inhumane treatment of a client. Also included is the use of threats of abuse or the willful failure of a division employee or volunteer to take any action necessary to stop or prevent abuse or failure to report observed or suspected abuse. For clients under eighteen years of age, the definition of child abuse in Employee's Manual XIII-D also applies. This definition does not include those physical or verbal acts minimally necessary to implement the institution's approved policies on client control measures and physical prompting and definitive verbal instruction.
- C. "Authorized Representative" as used in this Chapter means the client's parent(s), legal guardian, next of kin, or other person responsible for the client when the client is not a competent adult.
- D. "Client Representative" as used in this Chapter, means anyone the client designates. The term representative does not necessarily mean a legal representative. The designee may be a parent, legal guardian, friend, doctor, attorney, guardian ad litem, or other designated person.

HUMAN RIGHTSDEFINITIONS (cont'd)

- E. "Employee" as used in this Chapter is defined to include regularly salaried employees whether part-time or full-time, temporary or emergency employees, persons under contract with the institution, persons working for the contractor, and volunteers whether paid or not.
- F. "Facility" as used in this Chapter refers to the four mental health institutes and two hospital-schools which are under direct supervision of the Director of the Division.
- G. "Informed Consent" as used in this Chapter means the request for release of information has been explained to or for the benefit of the signee and the consent is given freely and voluntarily without fear of retribution or withdrawal of services. Informed consent will be shown by signing form MH-2201-0, Written Consent for Release of Confidential Information.
- H. "Patient" as used in this Chapter means a recipient of mental health services provided by one of the mental health institutes.
- I. "Resident" as used in this Chapter means a recipient of mental retardation services provided by one of the hospital-schools.
- J. "Guardianship" as used in this Chapter means appointment by the District Court of a guardian for another person known as a ward and transfers to the guardian responsibility for the care and welfare of the ward.
- K. "Division" as used in this Chapter means the Division of Mental Health Resources in the Department of Social Services.

CLIENT'S RIGHTS*Policy*

Clients receiving services from the Mental Health Institutes and Hospital-Schools shall have the same rights and privileges they would enjoy if they were not hospitalized insofar as is consistent with the individual client's treatment plan and the plans of other clients in the facility.

In order to preserve the client's self-respect and dignity, to assure optimum care and treatment, and to prevent physical and psychological abuse, the client shall have the following rights:

1. The client has the right to be treated with consideration and respect and full recognition of the individual's dignity as a human being.

HUMAN RIGHTSCLIENT'S RIGHTS (cont'd)*Policy* (cont'd)

2. The client has the right to be evaluated promptly following admission and shall receive emergency service as appropriate.
3. The client shall have the right to be informed regarding treatment plans and hospital rules and regulations applying to the client's conduct in the facility.
4. The client shall be provided with complete and current information concerning diagnosis, treatment and progress in terms and language understandable to the client. When it is not feasible to give this information directly to the client, the information shall be made available on behalf of the client to an immediate family member, guardian, or other authorized representative.
5. An individual written plan of services shall be developed for each client. The plan shall be implemented through prompt treatment of identified ailments, shall be kept current, and shall be modified when indicated.
6. The client may participate in the planning and decision-making with regard to himself/herself and be informed in writing of progress at reasonable intervals. Whenever possible, the client shall be given the opportunity to decide which of several appropriate alternative services to receive.
7. The client shall have the right to receive prompt and adequate treatment of physical and psychological ailments.
8. The client has the right not to receive unusual treatment procedures such a surgery, electro-convulsive therapy or aversive therapy without the client's expressed, informed consent or that the next of kin or authorized representative. Any unusual treatment shall be fully explained to the client in language that he/she or the authorized representative can reasonably be expected to understand.
9. The client has the right to refuse treatment to the extent permitted by law and to be informed of the consequences of such action.
10. The client shall have the right to lease restrictive conditions necessary to achieve the purposes of treatment. The client shall be free from control measures, except when a part of the treatment plan or when necessary to prevent harm to the client, harm to others, or damage to property.

HUMAN RIGHTSCLIENT'S RIGHTS (cont'd)*Policy* (cont'd)

11. The client shall have the right to be free from unnecessary or excessive medication or treatment intervention.
12. Medical records, ward charts and information regarding the evaluation, diagnosis, care and treatment shall be considered private and confidential.
13. An individual post hospitalization plan shall be developed for each client.
14. When the client is assigned to industrial therapy, the specific assignment shall be an integrated part of the treatment plan and the client shall be appropriately supervised. The client shall be compensated in accordance with federal and state laws for any work assignment.
15. The client shall retain all the rights of full citizenship except as may be specifically limited by the constitution or statute.
16. The client, or the authorized representative, shall have the right to be advised of the provisions of the law pertaining to admissions and discharge.
17. The voluntary mentally ill patient may obtain discharge by submitting a written notice to the superintendent or chief medical officer. The patient may be discharged immediately on request, except when the superintendent or chief medical officer intends to institute judicial procedures.
18. The voluntary mentally retarded resident may be discharged by the legally authorized representative submitting a 10 day written notice to the superintendent and the county board of supervisors in the county from which the resident was admitted.
19. The client shall have the right to file application for a writ of habeas corpus and the right to petition the court for release.
20. The involuntary client has the right to an attorney of choice and to judicial review of the hospitalization. When the client does not have an attorney, legal counsel shall be obtained through public resources available for legal assistance. The client has the right to consult privately with counsel at any reasonable time.
21. The client has the right to wear personal clothing and keep and use a reasonable amount of money as appropriate to the treatment program. The hospital shall provide for laundering the client's clothing and provide a reasonable amount of storage space for clothing and personal storage.

HUMAN RIGHTSCLIENT'S RIGHTS (cont'd)*Policy* (cont'd)

22. When a client does not have personal clothing or resources to purchase clothing, the institution shall furnish clothing which is clean, neat, and seasonally suitable.
23. The client shall be entitled to a safe, sanitary, and humane living environment which affords comfort, promotes dignity, and insures privacy as is appropriate to the client's treatment plan.
24. The client shall have the right to the opportunity for educational, vocational, rehabilitational, and recreational programs as compatible with the client's needs.
25. The client shall have access to current informational and recreational media, e.g., newspapers, television, or periodicals, in keeping with the client's treatment program.
26. The client has the right to religious worship of the client's choice in accordance with individual treatment programs. Pastoral counseling shall be available if desired.
27. The client shall have the right to unimpeded, private, and uncensored communication with others by mail and telephone and with persons of the client's choice except when therapeutic or security reasons dictate otherwise. Any limitations or restrictions imposed shall be approved by the superintendent or designee, and the reasons shall be made a part of the client's records.
28. The client or any person acting on behalf of the client may submit to the appropriate human rights committee in the institution or other appropriate authority for investigation and appropriate action complaints or grievances against any person, group of persons, organizations, or business regarding infringement of the benefits of the client and delivery of the services.
29. The client or authorized representative shall be advised of these rights at the time of hospitalization.
30. These rights shall be publicly posted in each institution.
31. All rights and responsibilities of the client shall develop to the client's authorized representative or sponsoring agency when:
 - a. The client is adjudicated incompetent in accordance with State law.

HUMAN RIGHTSCLIENT'S RIGHTS (cont'd)*Policy* (cont'd)

- b. The client's physician or qualified mental retardation professional has documented in such client's records the specific impairment that has rendered such client incapable of understanding these rights.

Comment

The mentally disabled are entitled to an atmosphere and administration that promotes personal dignity and protects their fundamental human, civil, constitutional and statutory rights to the same extent as any other citizen of the State. This includes, but is not limited to, a right to treatment and a right to refuse treatment, a right to the least restrictive form of treatment consistent with legal requirements, a right to confidentiality and a right to be protected from unauthorized experimentation.

These rules are designed to define the client's rights and to assure that these rights are reasonably exercised and protected during the period of the client's treatment experience. It is expected that observance of these rules will contribute to more effective care and greater satisfaction for the client and the staff.

Pertinent Legal Reference: Chapter 17A, Code of Iowa
Chapter 229, Code of Iowa
Iowa Administrative Code, 770--Chapter 28
45CFR 249.12 and 249.13
Federal ICF Residents Rights Interpretative
Guidelines

GRIEVANCE PROCEDURE*Policy*

The Division shall establish procedures to be used at the Mental Health Institutes and the State Hospital-Schools for the purpose of resolving conflicts and complaints presented by clients or their representatives concerning operational policies, procedures, practices, or staff.

Comment

The State is charged with caring for large numbers of persons who are mentally ill and mentally retarded. Inherent in the responsibility is the obligation to improve services whenever and wherever possible. At times a registered complaint, be it valid or perceived, may be the first indication of a problem and it deserves an orderly, effective response.

HUMAN RIGHTSGRIEVANCE PROCEDURE (cont'd)

Comment (cont'd)

Pertinent Legal References for all policies relating to this procedure:

Chapters 17A, 218, 222, and 229, Code of Iowa

Iowa Administrative Code 770, Chapter 28

Consolidated Standards, 1981 Edition, Joint Commission on Accreditation
of Hospitals

Human Rights Committee*Policy*

Each facility under the Division shall establish a Human Rights Committee which shall be responsible for receiving, investigating, and responding to formal complaints made against the facility by clients or their representatives which have not been otherwise resolved with an administrator.

Comment

The client or client representative may exercise the right to attempt to resolve a complaint or conflict directly with the facility administrator through non-written, formal or informal means rather than through the Human Rights Committee without loss of the right to later file with the Committee formally when an initial effort fails to bring about a satisfactory resolution.

Rules and Procedures*Policy*

The Human Rights Committee shall have the power to adopt procedures necessary to carry out its work and rules governing its functions including the power to exclude disruptive persons from the proceedings.

Conflict of Interest*Policy*

If a member of the Human Rights Committee is involved in the circumstances that gave rise to the complaint, the member shall be excluded from the investigation and procedures used in resolving the complaint for this particular case.

The resulting vacancy will be filled with a temporary appointee designated by the superintendent or his/her designee.

HUMAN RIGHTSGRIEVANCE PROCEDURE (cont'd)Filing a Formal Complaint*Policy*

A formal complaint must be filed with the Human Rights Committee in writing not more than ninety (90) days from the date of disclosure of the offending policy, procedure, practice, staff action, or act of omission giving rise to the complaint.

Comment

The complaint must be submitted in writing to any member of the Committee within 90 calendar days in order to be considered valid and acted upon by the Human Rights Committee, unless the committee finds that there are relevant, extenuating circumstances for the delay or the complaint has been resolved through informal processes.

Assistance in Filing*Policy*

Assistance shall be made available to a client or representative of a client in filing a formal complaint if assistance is required. The client and the representative shall be given assistance in understanding and encouragement in using an informal complaint process when that process appears feasible for accomplishing a satisfactory response by the facility.

Comment

The client may obtain the aid of a relative, guardian, client representative, staff member or member of the Human Rights Committee to assist in writing the formal complaint or seeking an informal resolution.

Complaint Review*Policy*

A complaint shall be reviewed by the Human Rights Committee within 7 calendar days after receipt.

Procedure

The member of the Human Rights Committee who receives the formal complaint from the client or client representative will notify the committee chairperson or acting chairperson within 24 hours that a complaint has been

HUMAN RIGHTSGRIEVANCE PROCEDURE (cont'd)Complaint Review (cont'd)*Procedure* (cont'd)

filed. The chairperson will schedule a review meeting of the Human Rights Committee to hear the complaint within 7 calendar days. The client or client representative, person implicated in the complaint, and any person who may be affected by the committee's decision will be notified of the scheduled hearing prior to the meeting.

Investigation by Committee*Policy*

The chairperson or acting chairperson of the Human Rights Committee shall appoint a member of the committee to investigate the complaint.

Comment

The investigation must be completed prior to the scheduled complaint review meeting.

Procedure

The assigned investigator will interview the client and or the client representative who submitted the complaint, any person implicated in the complaint or who may be adversely affected by the committee's decision in resolving the complaint, and other relevant witnesses. The investigator shall have access to any documents relevant to resolving the complaint.

Review Meeting*Policy*

At the scheduled review meeting, the Human Rights Committee shall receive the report of its investigating member and shall receive and written statement submitted by a person implicated in the complaint or from a person who may be adversely affected by the committee's decision.

Comment

The client and/or the client's representative submitting the complaint, the person implicated in the complaint and person who may be adversely affected by the committee's decision may appear before the Human Rights Committee at this time, in person or through their representative, and may offer evidence in support of their claim.

HUMAN RIGHTSGRIEVANCE PROCEDURE (cont'd)Complaint Review (cont'd)Documentation*Policy*

An electronic reproduction or written record shall be made of the meeting proceedings for each case which shall be kept for two years in the files maintained by the Chairperson of the Human Rights Committee.

Comment

After two years the records may be destroyed unless the complaint is the subject of further legal action.

Proposed Decision of the Committee*Policy*

The Human Rights Committee shall issue a written proposed decision within 14 calendar days of its review meeting. Copies of the proposed decision shall be provided to the client who submitted the complaint, persons implicated in the complaint and any person who may be adversely affected by the decision or their representatives. The proposed decision must state what facts were relied upon by the committee in reaching its conclusions. In cases where the committee finds a violation of the client's rights has been committed, it shall recommend the appropriate means of compensation. The proposed decision must notify all persons involved of the right to appeal and must give notice of the deadline for filing an appeal. The proposed decision is forwarded to the Superintendent.

Decision Of The Superintendent*Policy*

The superintendent shall give a written final decision within 21 calendar days after receiving the committee's proposed decision. If the superintendent should fail to issue a decision within the specified time limit, the proposed decision of the Human Rights Committee shall become the official decision of the facility.

Comment

The superintendent must review the proposed decision of the Human Rights Committee and may affirm, modify, or reverse the Committee's decision.

HUMAN RIGHTSGRIEVANCE PROCEDURE (cont'd)The Right to Appeal*Policy*

Any person adversely affected by the Human Rights Committee's proposed decision shall have the right to appeal to the Superintendent of the facility. The appeal must be filed within 14 calendar days of issuance of the Human Rights Committee's decision.

Procedure

The appeal shall be made by filing a written notice with the Superintendent request and stating the basis for the appeal.

The Right to Further Appeal*Policy*

Persons affected by the Committee's and or Superintendent's decision shall have further appeal rights to the District Court as outlined in the Code of Iowa (1979), Chapter 17A.

Retaliation Prohibited*Policy*

No individual shall be penalized or disadvantaged in any way for submitting and pursuing a complaint, for serving as the representative of a person involved in a complaint, or for providing information as requested in connection with this grievance procedure.

Comment

Any person who believes that he/she has been unfairly treated or penalized for utilizing the grievance procedure may present a complaint in the form of a grievance as outlined in this policy.

HUMAN RIGHTSGRIEVANCE PROCEDURE (cont'd)Confidentiality*Policy*

All interviews and information submitted relating to a particular complaint will be discussed only with persons directly involved in the complaint proceedings as outlined in this policy and only under appropriate circumstances.

ADVOCATESMental Health Institutes*Policy*

The superintendent of each mental health institute (MHI) shall assure that hospital staff assists and cooperates with the mental health advocates in a manner which assures proper maintenance of each patient's rights.

Comment

The members of the treatment team and direct care staff function as natural advocates for all patients in that their primary concern is the provision of appropriate, effective treatment in a setting which assures protection of each patient's rights.

In addition, the Code of Iowa provides that the District Court in each county shall appoint an individual to act as an external advocate representing the interest of all patients involuntarily hospitalized by that court in any matter relating to the patient's hospitalization. The advocate's responsibility begins with the attorney representing the patient reports to the court that his/her services are no longer needed.

Pertinent Legal Reference for all policies relating to advocacy unless otherwise noted: Section 229.19, Code of Iowa

Orientation*Policy*

The superintendent shall provide for full orientation of hospital staff and the court appointed advocates relative to their respective and mutual responsibilities.

HUMAN RIGHTSADVOCATES (cont'd)Mental Health Institutes (cont'd)Orientation (cont'd)*Comment*

The advocate's position is that of a positive representative of the patient's interest, not necessarily an adversary. In order to effectively promote the patient's best interest, hospital staff must understand and respect the advocate's role and statutory responsibilities. At the same time, the advocate must understand and respect hospital rules and procedures in order to most effectively serve the patient.

Communication with the Patient*Policy*

The hospital shall grant all reasonable requests of the advocate to communicate with the patient and shall provide a visiting room or other place in which the advocate may consult with the patient in private.

Comment

Free communication between the advocate and the patient is essential to a mutual understanding of the patient's interests and concerns.

Communication with Staff*Policy*

The hospital shall grant all reasonable requests of the advocate to communicate with clinical personnel treating the patient.

Comment

Hospital staff should make every reasonable effort to accommodate and cooperate with the advocate.

Verbal Interpretation*Policy*

In addition to the reports provided to the court, which the courts

HUMAN RIGHTSADVOCATES (cont'd)Mental Health Institutes (cont'd)Communication with Staff (cont'd)Verbal Interpretation (cont'd)*Policy* (cont'd)

are responsible for forwarding to the advocate, the hospital may give the advocate a verbal interpretation of the patient's current condition, treatment, progress and plan for discharge.

Comment

The assigned social worker will normally be responsible for this interpretation.

Access to the Medical Records*Policy*

The hospital shall make available to the advocate information contained in the patient's medical record that is appropriate and necessary for the advocate to determine the nature of, the impact, and the continuing need of the patient for treatment. This information shall be made available upon the advocate's presentation of a signed release from the patient and with the approval of the chief medical officer of the hospital as provided by statute.

Comment

This policy should be interpreted liberally in favor of the advocate. The intent of the statute is to make available to the advocate information that will assist the advocate to better represent the patient's interest.

Pertinent Legal Reference: Sections 229.19 and .25, Code of Iowa

Hospital-Schools*Policy*

In planning for community placement of a resident, if the resident has no living parent or qualified legal guardian, the Superintendent may request the appointment of an advocate to represent the interests of the resident in the placement proceedings.

HUMAN RIGHTSADVOCATES (cont'd)Hospital-Schools (cont'd)*Comments*

Although the Code permits the appointment of an advocate for a resident in reference to placement, guardianship is preferred. In practice, when the resident has no living parent, the Superintendent first seeks appointment of a guardian.

Pertinent Legal Reference: Section 222.59, Code of Iowa

GUARDIANSHIP*Policy*

Clients of the Hospital-Schools or Mental Health Institutes shall be provided with the capacity to have lawful informed consent given in behalf of their care and treatment if the client's capacity for such consent is absent or significantly limited. If such capacity for consent has not been provided to the client prior to his/her introduction to the facility, or if the capacity is removed while in residence by virtue of reaching age 18 or other circumstances, the Department shall initiate action to establish guardianship.

Pertinent Legal Reference: 45 CFR 249.13;
Section 229.2, Code of Iowa

Hospital-Schools*Policy*

The Hospital-Schools shall review at least annually the need of each resident for guardianship. This review shall be conducted at the time of the annual client status review required by Title XIX regulations.

Comment

The State Hospital-Schools are certified as intermediate care facilities for the mentally retarded (ICF/MR). The annual review required by Title XIX regulations shall include an assessment of the resident's need for guardianship. If it is determined that the resident is unable to exercise usual civil and legal rights, or is unable to effectively make decisions regarding programming and treatment, establishment of guardianship may be appropriate. Whether guardianship is needed and appropriate in a legal sense is a decision to be made by the court.

HUMAN RIGHTSGUARDIANSHIP (cont'd)Hospital-Schools (cont'd)*Comment* (cont'd)

Pertinent Legal reference: 45 CFR 249.13
Sections 222.31 and .34, Code of Iowa
Section 633.552, Code of Iowa

Mental Health Institutes*Policy*

The need for guardianship at a mental health institute shall be examined as circumstances indicate.

Comment

Consideration of guardianship for a client at a mental health institute is governed by factors unique to the mental health institution. Clients usually reside in the institute for shorter periods of time, have a greater probability of returning to an independent living arrangement in the community and have less need for guardianship. The mental health institute client usually will be able to authorize treatment or will have a third party who has authority to consent. If the client is a committed patient, is unable to give valid, informed consent to treatment or the hospital wishes to utilize a treatment modality which the court cannot authorize, then a need for a guardian may be indicated.

Pertinent Legal Reference: Sections 229.23 and .27, Code of Iowa

Establishment of Guardianship*Policy*

When it is determined that a client needs a guardian, the Department shall assist in the establishment of the guardianship.

Comment

The Department's role in the establishment of a guardianship will depend upon the extent to which third parties are involved with the client on a continuing basis. The need for guardianship should be reported to the client's parents, family, or surrogates. Often these individuals will take all steps necessary to institute a guardianship and the Department's role will be limited to identifying the need. In the event these individuals are unable or unwilling to institute guardianship proceedings, the Department's role will be expanded to assist in locating an individual

HUMAN RIGHTSGUARDIANSHIP (cont'd)Establishment of Guardianship (cont'd)*Comment* (cont'd)

willing to serve as the guardian; to assisting in obtaining appropriate legal assistance; and to assisting by assuming the role of guardian through court appointment.

Pertinent Legal Reference: Sections 222.31 and .34, Code of Iowa
45 CFR 249.13

Selection of Guardian*Policy*

The Department of Social Services shall assist in the selection of an appropriate person to serve as the client's guardian.

Comment

The person appointed as guardian of a client should be a person who has demonstrated an interest in the welfare of the client. Often this will be a parent, family member, or friend of the client's family. If there is no such person willing to serve in the role of guardian, it may be necessary to seek the services of an interested volunteer. As a last resort, the guardian appointed could be the Director of the Division of Community Programs, Department of Social Services. Such an appointment should be made only when no other is available due to the fact that the Department would be in the role of provider as well as advocate. The appearance of a conflict of interest could result.

A person selected as a guardian must meet certain legal qualifications. The guardian should be an individual who has attained majority. A corporation may not serve as guardian. The guardian should be a resident of the State of Iowa. A non-resident can be appointed if a showing of good cause is made to the court's satisfaction. A person who is mentally retarded, mentally ill, chronically alcoholic, a spendthrift or otherwise unsuitable cannot legally be appointed as a guardian.

Pertinent Legal Reference: Sections 222.31 and .34, Code of Iowa
Section 633.63, .64 and .552, Code of Iowa

HUMAN RIGHTSGUARDIANSHIP (cont'd)Establishment of Guardianship (cont'd)Legal Procedure*Policy*

Guardianship shall be established by order of the Iowa District Court for the county in which the proposed ward resides or is found.

Comment

When an attorney is retained and a proposed guardian selected, the role of the Department will be limited to supplying the attorney with the necessary information and statements to present the court. It is suggested that statements be available from a physician, psychologist and/or social worker who are familiar with the condition of the proposed ward. The attorney will also need the name and address of the proposed guardian, as well as the address and age of the proposed ward.

When the petition requesting establishment of a guardianship is filed with the court, the proposed ward will be served with a notice. Later a hearing will be held at which time the court will hear the evidence and determine the propriety of establishing guardianship. If the court determines that a guardianship is in the best interest of the proposed ward, the court will enter an order establishing a guardianship and appointing a guardian.

Pertinent Legal Reference: Sections 663.552 and 633.556, Code of Iowa

Review of Guardianship*Policy*

After a guardianship is established for a resident of a hospital-school, the Iowa Department of Social Services shall review the continuing need for guardianship at least annually.

Comment

During the annual review required by Title XIX regulations, the facility is required to review the legal status of each resident. Included in this review is an assessment of the resident's continuing need for guardianship. Among the options which should be considered are: (1) continuing present status; (2) shifting from a total to a limited guardianship or vice versa; (3) alteration in the scope of a limited guardianship; and (4) termination.

HUMAN RIGHTSGUARDIANSHIP (cont'd)Review of Guardianship (cont'd)*Comment* (cont'd)

If a change is indicated, the hospital-school should discuss the needed change with the guardian. If the ward is now capable of caring for his/her own person, termination of the guardianship would be proper.

RESEARCH, INVESTIGATION AND EXPERIMENTATION*Policy*

Research, investigation and experimentation studies in which human subjects are involved shall be conducted only if permitted by law, only by scientifically qualified individual in adequately equipped settings, and with appropriate supervision by a suitably qualified clinician.

Comment

The state is charged with caring for large numbers of persons who are mentally ill and mentally retarded. At the same time, there is a continuing responsibility to conduct research into effective treatment and prevention of mental disabilities and an obligation to study and improve the manner in which treatments are put in practice.

Pertinent Legal References for all policies related to Research, Investigation and Experimentation unless otherwise noted:

Consolidated Standards 1981 Edition, Joint Commission on Accreditation
of Hospitals, Chapter 13
Sections 229.23, .25, and 246.47, Code of Iowa
Public Welfare CFR Part. 46
Protection of Human Subjects
45 CFR 249.13 (42 CFR 442.216) AC/MR/DD Section 6

Prior Approval*Policy*

All studies shall bear the prior written approval of the facility Research Review Committee, the Human Rights Committee, the Superintendent, the Director of the Division, and the Commissioner of the Department of Social Services.

Research Review Committee*Policy*

Each facility shall establish a multi-disciplinary Research Review Committee.

HUMAN RIGHTSRESEARCH, INVESTIGATION AND EXPERIMENTATION (cont'd)Research Review Committee (cont'd)Membership*Policy*

Members shall be qualified by training and experience to conduct initial and continuing review of research projects. Mental health professionals other than facility staff may serve as members as deemed necessary. A majority should be made up of individuals not directly associated with the research project under consideration.

Responsibilities*Policy*

The committee's responsibility shall include, but not be limited to, the following:

1. Protection of the rights and welfare of the individuals involved;
2. Assessment of the risks and potential medical benefits of the project to the client, the family and society;
3. Review and approval of the proposal prior to submission to the Director of the Division of Mental Health Resources;
4. Establishment of the appropriate methods to obtain informed consent;
5. Assurance that informed consent has been obtained; and
6. Continuing review of all research activities during the course of the study.

Informed Consent*Policy*

Signed informed consent by the client, when appropriate, or the authorized representative shall be obtained prior to the client's involvement in the project.

Comment

The proposed research or experimentation shall be fully explained to the client in language he/she or the authorized representative can reasonably be expected to understand.

HUMAN RIGHTSRESEARCH, INVESTIGATION AND EXPERIMENTATION (cont'd)Informed Consent (cont'd)Right to Withdraw Consent*Policy*

The client or the authorized representative shall be informed of the client's right to withdraw consent at any stage of the project.

Patient's Rights*Policy*

The client or authorized representative shall be informed that the client does not lose legal rights because of participation in the proposed project.

Documentation*Policy*

The procedure utilized to obtain legally effective informed consent and the basis for the committee's determination that procedures are adequate and appropriate shall be fully documented.

Confidentiality*Policy*

The client's rights to confidentiality shall not be violated by the research study or its utilization without specific authorization given by the client and/or the authorized representative, or as required by law.

Pertinent Legal Reference: Section 229.25, Code of Iowa
Iowa Administrative Code, Chapter 9

ABORTION AND STERILIZATION*Policy*

The facilities of the Division shall not perform abortion or sterilization procedures on any patient or resident. The facility shall neither encourage or discourage the use of abortion and/or sterilization.

Comment

Each individual has the right to control his/her own reproductive function. The decision to obtain an abortion or sterilization is a private decision between an individual and the individual's family physician.

HUMAN RIGHTS**ABORTION AND STERILIZATION** (cont'd)

Comment (cont'd)

The Mental Health Institutes and the Hospital-Schools are not clinically equipped to perform surgical procedures.

Pertinent Legal Reference: Section 229.23(2), Code of Iowa
Iowa Administrative Code 770, Chapter 28

CLIENT ABUSE

Policy

Client abuse on the part of any Division employee is prohibited.

Comment

All types and degrees of client abuse are considered as serious problems that are not tolerated within the Division's institutions. The elimination of client abuse is the responsibility of all staff.

Notice to New Employees

Policy

Every new employee shall be notified verbally and in writing of the Division's policy on client abuse before any client contact is permitted.

Comment

Employees need to be apprised of this policy and their responsibility before they have client contact. This is for the protection of both the client and the employee. The explanation needs to cover all aspects of the policy and include examples of permitted and not permitted behavior.

Notice to Current Employees

Policy

At least once every six months each institution shall provide its current employees with a written reminder of the client abuse policy.

Comment

This is a minimum requirement. Employees should be regularly reminded of this policy. The frequency may vary depending upon institutional experience.

HUMAN RIGHTSCLIENT ABUSE (cont'd)New Employee Training*Policy*

Every new employee shall receive training on this policy and the prevention of client abuse as part of their new employee orientation or training.

Comment

This training should address what types of behavior are prohibited, the reasons why, how client abuse is reported and the types of disciplinary action that will be taken against employees when abuse is substantiated.

Ongoing Training*Policy*

Each institution shall have an ongoing employee training plan, approved by the Division Director, which instructs all staff on acceptable methods and procedures of client management.

Comment

Any employee who might come in contact with clients needs to be helped in knowing how to handle difficult situations without violating the client's rights. This should be a part of the institution's regular ongoing training program but special training needs should be assessed and met also.

Reporting Suspected Abuse*Policy*

Any Division employee witnessing or having knowledge of any act believed to be abuse shall immediately report the incident in accordance with the institution's policy.

Comment

The report would usually be made to the employee's supervisor or another supervisor. The employee is to report any act which might be suspected of abuse. The rule of thumb is, if there is any question, report it. It is better to err on the side of over-reporting.

HUMAN RIGHTSCLIENT ABUSE (cont'd)Reporting Suspected Abuse (cont'd)Institutional Procedures*Policy*

Each institution shall have written instructions for employees directing them on how and to whom to report allegation of abuse. The instructions shall provide for an immediate verbal report followed by a written report outlining the employee's knowledge of the situation.

Comment

Each institution's procedures will vary depending upon organizational structure and staff assignments. The procedure is to be as specific as possible and also provide a back-up system in case the normal system breaks down. The procedure will be readily available on each living, program or work unit where clients are present.

Notice to Superintendent*Policy*

The procedure shall provide for an immediate verbal notice to the superintendent or his or her designee.

Comment

This notice is to be given as soon as the supervisor receiving the report has determined that the client involved is safe from further abuse.

Failure to Report*Policy*

Any employee who observes or has knowledge of possible client abuse and who fails to report such and the incident is later substantiated as abuse, shall be considered as having attributed to client abuse.

Comment

All employees have an obligation to protect clients. Failure to take action is interpreted the same as having committed client abuse.

HUMAN RIGHTSCLIENT ABUSE (cont'd)Reporting Suspected Abuse (cont'd)Failure to Report (cont'd)Disciplinary Action*Policy*

When it is substantiated that an employee failed to report a confirmed incident of client abuse, that employee shall be disciplined.

Comment

If failure to report is substantiated, discipline must occur. The degree and form of the discipline will be based upon the facts of the situation and follow the normal Department disciplinary procedures.

Clients Under Age Eighteen*Policy*

Every reported client abuse incident involving a client under the age of eighteen shall be reported to the Department's child abuse reporting system.

Comment

Children in state institutions are afforded the same protections as any other child under the state's child abuse laws. In the absence of the superintendent, another person will be designated to be responsible for such reports.

Procedure

The superintendent is responsible for reporting the incident to the district administrator of the district in which the institution is located. The report shall be made within twenty-four hours after the superintendent receives verbal notice of alleged abuses.

Mandatory Reporters*Policy*

The superintendent of each institution shall identify all staff who are

HUMAN RIGHTSCLIENT ABUSE (cont'd)Clients Under Age Eighteen (cont'd)Mandatory Reporters (cont'd)*Policy* (cont'd)

mandatory reporters under the child abuse laws and apprise them of that status and its obligations. All new employees shall be so identified and informed.

Comment

The State Code identifies specific classes of people who are required to report suspected child abuse. Failure to make such reports can result in legal sanctions being imposed.

Investigation of Alleged Client Abuse*Policy*

Every reported incident of alleged abuse shall be investigated and a determination made as to whether the incident was substantiated or not substantiated.

Comment

Every allegation of abuse will be investigated internally. The purpose is to determine the facts as precisely as possible so appropriate administrative action can be taken.

Investigation Procedure*Policy*

Each institution shall have written procedure outlining how abuse investigations are to be conducted. All supervisory and management staff shall be familiar with the procedures and know their responsibilities for conducting or participating in an investigation.

Comment

The actual procedure may vary between institutions. The procedure should involve all levels of administration.

HUMAN RIGHTSCLIENT ABUSE (cont'd)Investigation of Alleged Client Abuse (cont'd)Preliminary Investigation*Policy*

The institution's investigation procedure shall include a preliminary investigation to be conducted by the first supervisor the incident is reported to and begins immediately upon receipt of the report. The supervisor is responsible to determine whether any immediate action is needed to protect the client from further abuse or whether any immediate medical care is needed.

Comment

The supervisor's first responsibility is to assure that the client is safe from further abuse. The preliminary investigation is also used to identify other staff who have first hand knowledge of the incident so they can be interviewed later. Once the supervisor is assured of the client's safety, the regular investigation process can start. The preliminary investigation begins at the time of either a verbal or written report, whichever comes first.

Immediate Action*Policy*

The supervisor conducting the preliminary investigation shall initiate whatever action is necessary to protect the client's health and well-being.

Comment

The type of action taken can include administering first aid, obtaining emergency medical services or removing the involved employee from responsibility for the client. Protection of the client from further abuse and obtaining any needed help is the primary objective.

Information Collected*Policy*

The supervisor conducting the preliminary investigation shall collect and record at a minimum the following information:

HUMAN RIGHTSCLIENT ABUSE (cont'd)Investigation of Alleged Client Abuse (cont'd)Information Collected (cont'd)*Policy* (cont'd)

- a. Date and time of incident;
- b. Staff and client location at time of incident;
- c. Staff and client activity just prior to incident;
- d. Description in detail of incident;
- e. Medical/physical evidence of the occurrence of abuse;
- f. Other witnesses to incident;
- g. Relationship of accused to client;
- h. Relationship of other staff to accused;
- i. Other pertinent information as the situation warrants.

Comment

The sooner information can be collected, the better chance there is of getting an accurate picture of what happened. This information is considered essential to a full investigation.

Written Statements*Policy*

Each staff person present at the time the incident occurred or who became involved after the incident occurred shall submit to his/her supervisor a written statement detailing her/his perception of what happened. The report shall be submitted no later than by the end of the next full day of work after the report has been requested.

Comment

The employee is not expected to state whether he/she believes abuse occurred. He/she needs only to relate what was seen or heard first hand. The employee needs to know the statement may be used for disciplinary or legal purposes so should be factual and not speculative.

Report to Superintendent*Policy*

The supervisor conducting the preliminary investigation shall make a

HUMAN RIGHTSCLIENT ABUSE (cont'd)Investigation of Alleged Client Abuse (cont'd)Report to Superintendent (cont'd)*Policy* (cont'd)

verbal report of his/her findings to the superintendent no later than the end of the first work day following the day the incident is reported. A written report shall be submitted to the superintendent by the end of the second working day.

Comment

This is a minimal standard and the reports should be made as soon as possible. The report should also go to other levels of supervisory staff as determined by the superintendent. The superintendent can designate another person to receive the reports in his/her absence.

Complete Investigation*Policy*

The findings and recommendations of the investigation shall be submitted in writing to the superintendent.

Comment

The superintendent is responsible for reviewing all incidents and in substantiated cases, seeing that appropriate disciplinary action is taken.

Report to the Division Director*Policy*

A copy of all reports of all substantiated instances of client abuse shall be sent to the Division Director.

Comment

Instances of client abuse are important enough that the Division Director needs to know what is happening. This reporting also permits looking at the incident of client abuse across the whole Division.

HUMAN RIGHTSCLIENT ABUSE (cont'd)Referral to Law Enforcement Agencies*Policy*

Any instance of substantiated client abuse which may be a violation of the State's Civil or Criminal Code shall be referred by the superintendent to the appropriate law enforcement agency.

Comment

The types of laws that can be involved include assault, sexual abuse, wanton neglect of a resident of a health care facility, and Civil Rights. The superintendent should have agreements with the local county attorney and the sheriff on how such referrals should also be made. Such referrals would include, instances where severe injury was sustained without an identifiable cause, a series of unexplained instances or instances where the institution's investigation ends up with contradictory information. The referral is to determine whether prosecution is appropriate or whether a more expert investigation is necessary.

Child Abuse Investigation*Policy*

The superintendent shall cooperate in every way possible in child abuse investigations of clients being conducted in accordance with the Department's child abuse investigation procedures. This includes access to all pertinent staff and hospital records.

Comment

All alleged incidents of child abuse are by law required to be investigated. This includes alleged incidents occurring in a Department institution. The child abuse investigation or its findings are not to replace the institution's own investigation.

Employee Discipline*Policy*

Every employee substantiated as having abused a client shall be disciplined. The form of discipline shall be in accordance with the Department's disciplinary procedures.

HUMAN RIGHTSCLIENT ABUSE (cont'd)Employee Discipline (cont'd)*Comment*

The type of discipline will vary depending upon the facts of the situation. Discipline will be given without regard to any legal sanctions that may occur because of Civil or Criminal prosecution.

Employee Protection from Harassment*Policy*

Employees who report suspected abuse situations shall not be harassed or intimidated by other staff for making the report.

Comment

If employees are to feel free to report incidents they need to be assured that they will not be subjected to harassment or threats but will be supported by the administration. The institution has a responsibility to prevent or stop any harassment and provide reasonable protection to employees who are harassed.

Substantiated Harassment*Policy*

Any employee who is substantiated as harassing another employee shall be subject to disciplinary action.

Comment

Harassment of other employees cannot be tolerated for any reason. The Department's normal discipline procedures will be followed.

Employee Screening*Policy*

All new or rehired employees of an institution shall be screened for prior reports of substantiated abuse.

Comment

The Department's abuse registry is available to screen for prior substantiated incidents. The screening requirement applies to all employees put on the state payroll, regardless of position.

HUMAN RIGHTSCLIENT ABUSE (cont'd)Employee Screening (cont'd)*Procedure*

When the decision to hire a person is made, form SS-1606-0, Request for Child Abuse Information, shall be submitted. The form is sent to the Child Abuse Registry.

Institutional Records*Policy*

Each institution shall maintain a record of all reported client abuse incidents. The record shall include the number of incidents reported, the type of abuse alleged, the number of substantiated incidents, the type of injury or injuries sustained by the client, the name of employees who were substantiated as having abused a client, the type of disciplinary action taken, whether a referral was made to a law enforcement agency, whether the client was a minor and the source of the referral.

Comment

This is a centralized institutional record that can be used to track client abuse for determining needed administrative action and to provide readily available uniform information among all the institutions.